

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WAYNE STEPHEN FALCIGLIA)	
)	
Plaintiff,)	
)	
vs.)	06-cv-192E
)	
ERIE COUNTY PRISON et al.,)	
)	
Defendants)	

MEMORANDUM OPINION

On March 6, 2007, Plaintiff filed a Motion to Compel Discovery [Doc. 28]. On March 29, 2007, Defendants Erie County Prison, Vincent Kinnane, and James Veshecco filed a Motion for Extension of Time to File Response/Reply [Doc. 30], a motion joined by Defendant Canteen Correctional Services on April 4, 2007 [Doc. 31]. On April 26, 2007, Magistrate Judge Baxter filed a Text Order granting Plaintiff's Motion to Compel Discovery and denying Defendants' Motion for Extension of Time to File Response/Reply. This Text Order states in relevant part that: "Defendant are hereby ordered to respond to Plaintiff's discovery requests by May 17, 2007. Plaintiff shall then have until June 7, 2007 to file his response to Defendants' Motion for Summary Judgment [Document #24], and Defendants shall have until June 17, 2007 to file a reply to Plaintiff's response." On May 7, 2007, Defendant Canteen Correctional Services filed an Objection to/Appeal of Magistrate Judge Baxter's April 26, 2007. In its Objection/Appeal, Defendant argues that "discovery is not warranted in connection with his medical diet claim, which is the only claim pending against Canteen. Both the Court and the prisoner plaintiff already received the documentary evidence relating to the medical diet claim, and after reviewing

the documents, the Court determined that plaintiff received a nutritionally adequate medical diet tailored to his diabetic condition during his incarceration at the Erie County Prison. See Defendant's Objections and/or Notice of Appeal from Magistrate Judge's April 26, 2007 Order, pp. 1-2, citing Magistrate Judge's Report and Recommendation dated October 10, 2006 and this Court's Order dated February 12, 2007. Defendant Canteen Correctional Services also requests that the Court dismiss the Plaintiff's medical diet claim pursuant to 42 U.S.C. § 1997e(c) based upon our prior rejection of the medical diet claim on the merits. Id. at 2.

This Court will review Magistrate Judge Baxter's April 26, 2007 Text Order for "clear error." As explained in Wachtel v. Guardian Life Ins. Co., 239 F.R.D. 376 (D. N.J. 2006) (citations omitted):

A magistrate judge's rulings concerning discovery . . . are non-dispositive motions. *see also* L. Civ. R. 72.1(a), cmt. 3 (noting that orders compelling document production and imposing sanctions for discovery abuses are non-dispositive motions). Thus, a magistrate judge's adjudication of a non-dispositive motion will be set aside only if the order is found to be clearly erroneous or contrary to law. A magistrate judge's order is clearly erroneous only "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.

Id. at 384. Upon consideration of Plaintiff's Motion to Compel Discovery and Defendants' Motion for Extension of Time to File Response/Reply, we find that Magistrate Judge Baxter did not commit clear error when she granted Plaintiff's Motion to Compel Discovery and denied Defendants' Motion for Extension of Time to File Response/Reply. Defendants have filed a motion for summary judgement. Plaintiff seeks documentation from Defendants to defeat Defendants' motion for summary judgment. Under the federal rules of civil procedure, he is entitled to such documentation.

Furthermore, with respect to Defendant's request that this Court dismiss the Plaintiff's medical diet claim pursuant to 42 U.S.C. § 1997e(c) based upon its prior rejection of the medical diet claim on the merits, this Court will not dismiss a claim based upon an argument that has not first been brought up before the magistrate judge who is handling the case. Counsel should refrain from making such requests in the future.

Defendant Canteen Correctional Services' Objections and/or Notice of Appeal from Magistrate Judge's April 26, 2007 Order is denied. An appropriate Order follows.

S/Maurice B. Cohill, Jr.
Maurice B. Cohill, Jr.
Senior District Court Judge

May 17, 2007